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***Remarks***

Reconsideration of remaining claims 32 and 35-40 is respectfully requested.

In the Office action dated November 30, 2004 (application Paper no. not shown), the Examiner rejected claims 32,33,37 and 39 under 35 USC § 102(e) and remaining claims 34-36 and 38-40 under 35 USC § 103(a). The Examiner's rejections will be addressed below in the order appearing in the Office action.

***35 USC § 102(e) Rejection - Claims 32-33, 37 and 39***

The Examiner first rejected claims 32, 33, 37 and 39 under 35 USC 102(e) as being anticipated by US Patent 6,144,637 (Calvignac et al.). In response, applicants have amended independent claim 32 to include the limitation of claim 34 which defines a non-matching rate into a plurality of sub-sessions of "identical subsession rate". The use of a plurality of "identical subsession rate" elements is not disclosed or suggested by Calvignac et al. Applicants therefore respectfully request the Examiner to reconsider this rejection and find amended claim 32 and remaining claims 37 and 39 to be in condition for allowance. Dependent claim 33 has been cancelled.

***35 USC § 103(a) Rejection - Claims 34-36***

Claims 34-36 were next rejected by the Examiner under 35 USC 103(a) as being unpatentable over Calvignac et al., as above. The Examiner stated that "Calvignac et al. discloses all of the limitations of the claims except [the]step of splitting includes the step of splitting the session into subsessions where every subsession has an identical subsession rate .... At the time the invention was made it would have been obvious to a person of ordinary skill in the art to modify timing circuits of Calvignac to be able to produce connections at identical frequencies. One of ordinary skill in the art would be motivated to do so for efficient routing".

In response, applicants disagree with the Examiner's conclusion regarding the "obviousness" of using multiple identical rate subsessions in the teaching of Calvignac et al. Indeed, it is asserted that Calvignac et al. teaches away from such an arrangement by

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utilizing a hierarchical approach to “splitting” sessions rates. The Examiner is referred to the specification at columns 3 and 4 which describe the scheduling of connections at certain negotiated rates as containing as many as three or four different “subsession rates”, where speed is a priority by using the highest available data rates for each portion of the communication. Indeed, as discussed in column 4, beginning at line 39, the circuits as described as “polled in order of decreasing frequency” to provide “a priority control mechanism which ensures that the timing circuits can only generate a packet transfer signal if there is no timing circuit of higher frequency wishing to generate a packet transfer signal at that time”.

In contrast, the present invention utilizes an opposite approach, where instead of using a number of separate number of rates (using the “highest” acceptable rate), the invention uses the *lowest* appropriate rate, with an increase in the number of subsessions running at that rate. It is asserted that such an approach is not disclosed, suggested or rendered obvious by Calvignac et al. The Examiner is referred to our text, beginning at 17 of page 10 for this “equal rate” aspect of the present invention.

In light of the amendment to claim 32 to include this “identical subsession rate” limitation from claim 34, applicants assert that claim 32, as well as claims 35 and 36 are not rendered obvious by the teachings of Calvignac et al. Applicants respectfully request the Examiner to reconsider this rejection and find amended claim 32, as well as claims 35 and 36, to be in condition for allowance.

### ***35 USC § 103(a) Rejection - Claims 38, 40***

Lastly, the Examiner rejected claims 38 and 40 under 35 USC 103(a) as being unpatentable over Calvignac et al. (as discussed above), in further view of US Patent 6,408,005 (Fan et al.). The Examiner cited Fan et al. as teaching “scheduling for rate shaping utilizing timestamps associated with each queue”.

In response, applicants assert that the combination of Calvignac et al. and Fan et al. still lacks the teaching of using a plurality of “identical subsession rate” packets. Without this teaching, applicants assert that claims 38 and 40 (as depending from amended claim 32) cannot be found to be rendered obvious. Applicants therefore

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respectfully request the Examiner to reconsider this rejection and find claims 38 and 40 to be in condition for allowance.

If for some reason or other the Examiner does not agree that the case is ready to issue and that an interview or telephone conversation would further the prosecution, the Examiner is invited to contact applicants' attorney at the telephone number listed below.

Respectfully submitted,

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